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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/687,828

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James Paschal McCloskey

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01/30/2006

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EXAMINER

RODRIGUEZ, JOSEPH C

ART UNIT

PAPER NUMBER

3653

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/687,828	Applicant(s) MCCLOSKEY, JAMES PASCHAL	
	Examiner Joseph C. Rodriguez	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-22,25,32,45 and 52 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3-22,25,32,45 and 52 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/6/06; 4/25/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 6 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble of claim 5 defines a stockpiling conveyor, however, claim 5 depends from a claim defining a portable trommel in its preamble, thus it is unclear if Applicant is claiming a portable trommel or a stockpiling conveyor. Claim 6 is similarly flawed as Applicant returns to claiming a portable trommel, thus the scope of Applicant's invention is unclear.

Regarding claim 10, the language "first" (ln. 2) is indefinite as it is unclear what first Applicant is referring to.

Examiner requests clarification. In the interim, Examiner has interpreted claim 5 as defining a portable trommel including a stockpiling conveyor as claimed and claim 10 as referencing the stockpiling conveyor. Applicant is also respectfully reminded that dependent claims should further limit the parent claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Re-Tech Eliminator ("Re-Tech")(see Exhibits A-E listed on Non-Patent Literature p. 2 of 3 in IDS, IFW date 4/25/05 and Appendix A, describing Figures 1-13 that contain specifications and color photos of Eliminator, also listed as Non-Patent Literature p. 2 of 3 in IDS, IFW date 4/25/05).

Re-tech teaches a trommel vehicle (best shown in fig. 12, 13 of Appendix A) comprising:

- a chassis (see vehicle structure mounted over wheels) supported for travel over a ground surface;

- an input hopper with a conveyor means (Fig. 13, see top photo and Specifications teaching "direct in-feed conveyors");

- an elongate trommel (Fig. 13, drum) mounted on the chassis having an input (vehicle front) and output ends (vehicle rear);

- an output means mounted below the trommel (Fig. 13, see diagram below photos wherein collection and discharge chutes for respective conveyors are inherent);

- a deployable elongate conveyor, or rejected material conveyor, having first and second elongate components where the first component is mounted on the chassis adjacent the output end of the trommel and is movable relative to the chassis about angularly displaced first and second axes and where the second component articulates with the first component about a third axis that is generally parallel to the second axis as

the conveyor moves between a deployed and stowed condition (Fig. 12, 13, showing deployed and stowed conditions of double fold out reject conveyor at trommel output end as well as hydraulic actuating means and mechanical linkages for the folding conveyors); and

a stockpiling conveyor mounted on the other end of the chassis (Fig. 12, 13, showing deployed and stowed conditions of double fold out stockpiling conveyor near trommel input end as well as actuating, support means and mechanical linkages), wherein the rejected material conveyor and the stockpiling conveyor extend upwardly and outwardly during operation and do not extend substantially outwardly in their retracted positions (Id.). With regards to claim 45, it is noted that the axes can be drawn virtually anywhere in relation to the conveyor as Applicant has not specified a relative plane (i.e., horizontal or vertical) for the axes, thus the conveyor can be regarded as articulating or moving about these axes as claimed. Further, a power source and control means for the hydraulic actuating means taught can be regarded as inherent.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 7-22, 32 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Re-Tech in view of Pettijohn (US 5,193,971) and Cedar Rapids

("Cedar")(see Exhibits N, O, P1-P3 listed on Non-Patent Literature p. 2 of 3 in IDS, IFW date 4/25/05).

Re-Tech as set forth above teaches all that is claimed except for expressly teaching the stockpiling conveyor with the first lower part mounted to a turntable that is mounted to the chassis for rotation about a vertical axis, wherein said conveyor includes driven means and hydraulic actuating means. Pettijohn, however, teaches a folding conveyor that rotates about a vertical axis (Fig. 6 teaching turntable 58, 94 driving by hydraulic system and actuating means 16, 17). Cedar also teaches a delivery conveyor that rotates about a vertical axis (Exhibit N1, teaching swivel conveyor). Moreover, Cedar teaches that these conveyors have a broader range of movement, thus allowing more flexibility and maneuverability when creating stockpiles (Id. teaching greater clearance). Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the conveyors taught by Re-Tech as taught above to allow for greater flexibility and maneuverability when creating stockpiles and delivering material.

Response to Arguments

Applicant's arguments are moot in view of the newly formulated prior art rejection as recited above. Here, it is further noted for the record that the color photographs re-submitted by Applicant have been received and considered by Examiner.

Allowable Subject Matter

Claims 5-6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 5,819,950 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

Further, in accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed if Applicant chooses to make further amendments to the application.

That is, an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1), that also encompasses the amendments, that contains a statement that all amendments made since the filing of the reissue were made without any deceptive intention on the

part of the applicant (see 37 CFR 1.175 and MPEP § 1414) would overcome a rejection under 35 U.S.C. 251.

Conclusion

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Joseph C Rodriguez** whose telephone number is **571-272-6942** (M-F, 9 am – 6 pm, EST).

The **Official** fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

The examiner's **UNOFFICIAL Personal fax number** is **571-273-6942**.

Further, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only.

For more information about the PAIR system, see

<http://pair-direct.uspto.gov>

Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at **866-217-9197** (Toll Free).

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Alternatively, inquiries of a general nature or relating to the status of this application or proceeding can also be directed to the **Receptionist** whose telephone number is **571-272-6584** or to the Supervisory Examiner, Kathy Matecki, **571-272-6951**.

Signed by Examiner Joseph Rodriguez

jcr

January 19, 2006

A handwritten signature in black ink, appearing to be 'J. Rodriguez', written in a cursive style.